

necessarily to become a part of or additions to an existing interstate highway system, but their construction is plainly of a national rather than a local character, as evidenced by the Federal financial contribution to their construction. And neither the fact that they are not dedicated to interstate use during their construction, nor the fact that they will constitute alternate routes rather than replacement of existing road, constitute sufficient basis, under the controlling court decisions, for excluding them from the coverage of the Act.⁵¹ Accordingly, unless and until authoritative court decision in the future hold otherwise, the construction of such new highways and expressways will be regarded as covered.

§ 776.30 Construction performed on temporarily idle facilities.

The Act applies to work on a covered interstate instrumentality or production facility even though performed during periods of temporary non-use or idleness.⁵² The courts have held the Act applicable to performance of construction work upon a covered facility even though the use of the facility was temporarily interrupted or discontinued.⁵³ It is equally clear that the repair or maintenance of a covered facility (including its machinery, tools, dies, and other equipment) though performed during the inactive or dead season, is subject to the Acts.⁵⁴

⁵¹ *Mitchell v. Vollmer & Co.*, ante; *Tobin v. Pennington-Winter Const. Co.*, 198 F. (2d) 334, certiorari denied 345 U.S. 915; and *Bennett v. V. P. Loftis Co.*, 167 F. (2d) 286.

⁵² *Walton v. Southern Package Corp.*, 320 U.S. 540; *Slover v. Wathen & Co.*, 140 F. (2d) 258 (C.A. 4); *Bodden v. McCormick Shipping Corp.*, 188 F. (2d) 733; and *Russell Co. v. McComb*, 187 F. (2d) 524 (C.A. 5).

⁵³ *Pedersen v. J. F. Fitzgerald Construction Co.*, ante; *Bennett v. V. P. Loftis*, ante; *Walling v. McCrady Const. Co.*, ante; and *Bodden v. McCormick Shipping Corp.*, 188 F. (2d) 733.

⁵⁴ *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254; *Bowie v. Gonzalez*, 117 F. (2d) 11; *Weaver v. Pittsburgh Steamship Co.*, 153 F. (2d) 597, certiorari denied 328 U.S. 858; *Walling v. Keensburg Steamship Co.*, 462 F. (2d) 405.

**PART 778—OVERTIME
COMPENSATION**

Subpart A—General Considerations

Sec.

- 778.0 Introductory statement.
- 778.1 Purpose of interpretative bulletin.
- 778.2 Coverage and exemptions not discussed.
- 778.3 Interpretations made, continued, and superseded by this part.
- 778.4 Reliance on interpretations.
- 778.5 Relation to other laws generally.
- 778.6 Effect of Davis-Bacon Act.
- 778.7 Effect of Service Contract Act of 1965.

**Subpart B—The Overtime Pay
Requirements**

INTRODUCTORY

- 778.100 The maximum-hours provisions.
- 778.101 Maximum nonovertime hours.
- 778.102 Application of overtime provisions generally.
- 778.103 The workweek as the basis for applying section 7(a).
- 778.104 Each workweek stands alone.
- 778.105 Determining the workweek.
- 778.106 Time of payment.

PRINCIPLES FOR COMPUTING OVERTIME PAY
BASED ON THE "REGULAR RATE"

- 778.107 General standard for overtime pay.
- 778.108 The "regular rate".
- 778.109 The regular rate is an hourly rate.
- 778.110 Hourly rate employee.
- 778.111 Pieceworker.
- 778.112 Day rates and job rates.
- 778.113 Salaried employees—general.
- 778.114 Fixed salary for fluctuating hours.
- 778.115 Employees working at two or more rates.
- 778.116 Payments other than cash.
- 778.117 Commission payments—general.
- 778.118 Commission paid on a workweek basis.
- 778.119 Deferred commission payments—general rules.
- 778.120 Deferred commission payments not identifiable as earned in particular workweeks.
- 778.121 Commission payments—delayed credits and debits.
- 778.122 Computation of overtime for commission employees on established basic rate.

**Subpart C—Payments That May Be
Excluded From the "Regular Rate"**

THE STATUTORY PROVISIONS

- 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

Pt. 778

29 CFR Ch. V (7–1–06 Edition)

EXTRA COMPENSATION PAID FOR OVERTIME

- 778.201 Overtime premiums—general.
- 778.202 Premium pay for hours in excess of a daily or weekly standard.
- 778.203 Premium pay for work on Saturdays, Sundays, and other “special days”.
- 778.204 “Clock pattern” premium pay.
- 778.205 Premiums for weekend and holiday work—example.
- 778.206 Premiums for work outside basic workday or workweek—examples.
- 778.207 Other types of contract premium pay distinguished.

BONUSES

- 778.208 Inclusion and exclusion of bonuses in computing the “regular rate”.
- 778.209 Method of inclusion of bonus in regular rate.
- 778.210 Percentage of total earnings as bonus.
- 778.211 Discretionary bonuses.
- 778.212 Gifts, Christmas and special occasion bonuses.
- 778.213 Profit-sharing, thrift, and savings plans.
- 778.214 Benefit plans; including profit-sharing plans or trusts providing similar benefits.
- 778.215 Conditions for exclusion of benefit-plan contributions under section 7(e)(4).

PAYMENTS NOT FOR HOURS WORKED

- 778.216 The provisions of section 7(e)(2) of the Act.
- 778.217 Reimbursement for expenses.
- 778.218 Pay for certain idle hours.
- 778.219 Pay for foregoing holidays and vacations.
- 778.220 “Show-up” or “reporting” pay.
- 778.221 “Call-back” pay.
- 778.222 Other payments similar to “call-back” pay.
- 778.223 Pay for non-productive hours distinguished.
- 778.224 “Other similar payments”.

TALENT FEES IN THE RADIO AND TELEVISION INDUSTRY

- 778.225 Talent fees excludable under regulations.

Subpart D—Special Problems

INTRODUCTORY

- 778.300 Scope of subpart.

CHANGE IN THE BEGINNING OF THE WORKWEEK

- 778.301 Overlapping when change of workweek is made.
- 778.302 Computation of overtime due for overlapping workweeks.

ADDITIONAL PAY FOR PAST PERIOD

- 778.303 Retroactive pay increases.

HOW DEDUCTIONS AFFECT THE REGULAR RATE

- 778.304 Amounts deducted from cash wages—general.
- 778.305 Computation where particular types of deductions are made.
- 778.306 Salary reductions in short workweeks.
- 778.307 Disciplinary deductions.

LUMP SUM ATTRIBUTED TO OVERTIME

- 778.308 The overtime rate is an hourly rate.
- 778.309 Fixed sum for constant amount of overtime.
- 778.310 Fixed sum for varying amounts of overtime.
- 778.311 Flat rate for special job performed in overtime hours.

“TASK” BASIS OF PAYMENT

- 778.312 Pay for task without regard to actual hours.
- 778.313 Computing overtime pay under the Act for employees compensated on task basis.
- 778.314 Special situations.

EFFECT OF FAILURE TO COUNT OR PAY FOR CERTAIN WORKING HOURS

- 778.315 Payment for all hours worked in overtime workweek is required.
- 778.316 Agreements or practices in conflict with statutory requirements are ineffective.
- 778.317 Agreements not to pay for certain nonovertime hours.
- 778.318 Productive and nonproductive hours of work.

EFFECT OF PAYING FOR BUT NOT COUNTING CERTAIN HOURS

- 778.319 Paying for but not counting hours worked.
- 778.320 Hours that would not be hours worked if not paid for.

REDUCTION IN WORKWEEK SCHEDULE WITH NO CHANGE IN PAY

- 778.321 Decrease in hours without decrease in pay—general.
- 778.322 Reducing the fixed workweek for which a salary is paid.
- 778.323 Effect if salary is for variable workweek.
- 778.324 Effect on hourly rate employees.
- 778.325 Effect on salary covering more than 40 hours’ pay.
- 778.326 Reduction of regular overtime workweek without reduction of take-home pay.
- 778.327 Temporary or sporadic reduction in schedule.
- 778.328 Plan for gradual permanent reduction in schedule.
- 778.329 Alternating workweeks of different fixed lengths.

Wage and Hour Division, Labor

§ 778.1

PRIZES AS BONUSES

- 778.330 Prizes or contest awards generally.
- 778.331 Awards for performance on the job.
- 778.332 Awards for activities not normally part of employee's job.
- 778.333 Suggestion system awards.

Subpart E—Exceptions From the Regular Rate Principles

COMPUTING OVERTIME PAY ON AN "ESTABLISHED" RATE

- 778.400 The provisions of section 7(g)(3) of the Act.
- 778.401 Regulations issued under section 7(g)(3).

GUARANTEED COMPENSATION WHICH INCLUDES OVERTIME PAY

- 778.402 The statutory exception provided by section 7(f) of the Act.
- 778.403 Constant pay for varying workweeks including overtime is not permitted except as specified in section 7(f).
- 778.404 Purposes of exemption.
- 778.405 What types of employees are affected.
- 778.406 Nonovertime hours as well as overtime hours must be irregular if section 7(f) is to apply.
- 778.407 The nature of the section 7(f) contract.
- 778.408 The specified regular rate.
- 778.409 Provision for overtime pay.
- 778.410 The guaranty under section 7(f).
- 778.411 Sixty-hour limit on pay guaranteed by contract.
- 778.412 Relationship between amount guaranteed and range of hours employee may be expected to work.
- 778.413 Guaranty must be based on rates specified in contract.
- 778.414 "Approval" of contracts under section 7(f).

COMPUTING OVERTIME PAY ON THE RATE APPLICABLE TO THE TYPE OF WORK PERFORMED IN OVERTIME HOURS (SECS. 7(G)(1) AND (2))

- 778.415 The statutory provisions.
- 778.416 Purpose of provisions.
- 778.417 General requirements of section 7(g).
- 778.418 Pieceworkers.
- 778.419 Hourly workers employed at two or more jobs.
- 778.420 Combined hourly rates and piece rates.
- 778.421 Offset hour for hour.

Subpart F—Pay Plans Which Circumvent the Act

DEVICES TO EVADE THE OVERTIME REQUIREMENTS

- 778.500 Artificial regular rates.
- 778.501 The "split-day" plan.

PSEUDO-BONUSES

- 778.502 Artificially labeling part of the regular wages a "bonus".
- 778.503 Pseudo "percentage bonuses".

Subpart G—Miscellaneous

- 778.600 Veterans' subsistence allowances.
- 778.601 Special overtime provisions available for hospital and residential care establishments under section 7(j).
- 778.602 Special overtime provisions under section 7(b).
- 778.603 Special overtime provisions for certain employees receiving remedial education under section 7(q).

AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

SOURCE: 33 FR 986, Jan. 26, 1968, unless otherwise noted.

Subpart A—General Considerations

§ 778.0 Introductory statement.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, child labor, and equal pay requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 778.1 Purpose of interpretative bulletin.

This part 778 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained